

IC 31-16-15

Chapter 15. Child Support Income Withholding Orders

IC 31-16-15-1

Income withholding order; inactive orders

Sec. 1. (a) In a proceeding under IC 31-14 or IC 31-16-2 through IC 31-16-12 to establish, modify, or enforce a child support order, the court shall:

- (1) enter an order for immediate income withholding; and
- (2) modify any previously issued income withholding order that has not been activated under this chapter to provide for immediate income withholding.

(b) The court shall issue the income withholding order to the income payor not later than fifteen (15) calendar days after the court's determination.

(c) The income withholding order must order income payors to send to the clerk of the court or other person specified in the support order under:

- (1) IC 31-14-11-11;
- (2) IC 31-16-4; or
- (3) IC 31-16-9;

the amount of income established by the court for child support at the time the order for child support is established, enforced, or modified.

(d) However, the court shall issue an income withholding order that will not become activated except upon the occurrence of the two (2) conditions described in section 2 of this chapter if:

- (1) the parties submit a written agreement providing for an alternative child support arrangement; or
- (2) the court determines that good cause exists not to require immediate income withholding.

(e) A finding of good cause under subsection (d)(2) must:

- (1) be written; and
- (2) include:
 - (A) all reasons why immediate income withholding is not in the best interests of the child; and
 - (B) if the case involves a modification of support, a statement that past support has been timely paid.

(f) The income withholding order must contain a statement that if the withholding order is activated, income payors will be ordered to send to the clerk of the court or other person specified in the support order under:

- (1) IC 31-14-11-11;
- (2) IC 31-16-4; or
- (3) IC 31-16-9;

the amount of income established by the court for child support.

As added by P.L.1-1997, SEC.8.

IC 31-16-15-2

Occurrences requiring activation of order by court

Sec. 2. A court acting under section 1(d)(1) or 1(d)(2) of this

chapter shall activate the immediate income withholding order under section 5 or 6 of this chapter upon occurrence of either of the following:

- (1) The obligor's support payment becomes delinquent.
- (2) The obligor requests that the withholding order become activated.

As added by P.L.1-1997, SEC.8.

IC 31-16-15-3

Agency authority to require income withholding

Sec. 3. In the case of a support order that is enforced by the Title IV-D agency after June 30, 1985, the Title IV-D agency may require an income payor to withhold income from:

- (1) a delinquent obligor;
- (2) an obligor who requests an immediate income withholding order; or
- (3) the obligor if:
 - (A) the custodial parent requests an immediate income withholding order;
 - (B) the obligor is at least one (1) month in arrears; and
 - (C) the Title IV-D agency determines that the request be approved;

despite the absence of a withholding order in the support order if the Title IV-D agency complies with the requirements imposed by sections 7, 10, 11, 13, and 14 of this chapter.

As added by P.L.1-1997, SEC.8.

IC 31-16-15-4

Notice to income payor of implementation of income withholding

Sec. 4. (a) This section applies to the implementation of income withholding under an order issued under sections 1 and 3 of this chapter.

(b) If the Title IV-D agency or the court becomes aware that the obligor has an income payor to whom a notice has not been sent under subsection (c) or an income payor to whom notice of delinquent support has not been sent under subsection (c):

- (1) the Title IV-D agency in a case arising under Title IV-D of the federal Social Security Act (42 U.S.C. 651 through 669); or
- (2) the court;

shall not later than fifteen (15) calendar days after becoming aware of an income payor send a written notice to the income payor that the withholding is binding on the income payor.

(c) The notice to an income payor under this section must contain a statement of the following:

- (1) That the income payor is required to withhold a certain amount of income from the obligor.
- (2) That the total amount to be withheld under court order by the obligor's income payor from the obligor's income is the sum of:
 - (A) the obligor's current child support obligation;
 - (B) an amount to be applied toward the liquidation of any arrearages; and

(C) an optional fee of two dollars (\$2), which is payable to and imposed at the option of the income payor, each time the income payor forwards income to the clerk of the court or other person specified in the notice;

up to the maximum amount permitted under 15 U.S.C. 1673(b).

(3) That the income payor shall:

(A) forward the withheld income described in subdivision (2)(A) and (2)(B) to the clerk of the court or other person named in the notice at the same time that the obligor is paid; and

(B) include a statement identifying:

(i) each cause number;

(ii) the name of each obligor; and

(iii) the name of each payee with the withheld income forwarded by the income payor.

(4) That withholding is binding upon the income payor until further notice from a Title IV-D agency.

(5) That the obligor may recover from the income payor in a civil action an amount not less than one hundred dollars (\$100) if the income payor:

(A) discharges the obligor from employment;

(B) refuses the obligor employment; or

(C) disciplines the obligor;

solely because the income payor is required to forward income under this chapter.

(6) That the income payor is liable for any amount that the income payor fails to forward under this chapter.

(7) That withholding under this chapter has priority over any secured or unsecured claim on income except claims for federal, state, and local taxes.

(8) That, if the income payor is required to withhold income from more than one (1) obligor, the income payor may:

(A) combine in a single payment the withheld amounts for all obligors who have been ordered to pay the same clerk or other governmental agency; and

(B) separately identify the part of the single payment that is attributable to each individual obligor.

(9) That if:

(A) there is more than one (1) order for withholding against a single obligor; and

(B) the obligor has insufficient disposable earnings to pay the amount required by all the orders;

the income payor shall distribute the withheld earnings pro rata among the entities entitled to receive earnings under the orders, giving priority to a current support withholding order. The income payor shall honor all withholdings to the extent that the total amount withheld does not exceed the limits imposed under 15 U.S.C. 1673(b).

(10) That the income payor shall implement withholding not later than the first pay date after fourteen (14) days following the date the notice was received.

- (11) That the income payor shall:
- (A) notify:
 - (i) the Title IV-D agency if the Title IV-D agency gives the notice under this section; or
 - (ii) the court if the court gives the notice under this section; when the obligor ceases employment or no longer receives income not later than ten (10) days after the employment or income ceases; and
 - (B) provide:
 - (i) the obligor's last known address; and
 - (ii) the name and address of the obligor's new income payor, if known.

As added by P.L.1-1997, SEC.8.

IC 31-16-15-4.5

National Medical Support Notice

Sec. 4.5. The child support bureau of the division of family and children shall send notice to an employer, using the National Medical Support Notice described in 45 CFR 303.3, that:

- (1) a parent ordered to pay support has been ordered to provide insurance coverage as part of the parent's employee benefit plan under IC 31-16-6-4; or
- (2) an obligation to provide insurance coverage under subdivision (1) is no longer in effect.

As added by P.L.86-2002, SEC.12.

IC 31-16-15-5

Activation of order by Title IV-D agency

Sec. 5. In a case arising under Title IV-D of the federal Social Security Act (42 U.S.C. 651 through 669), the Title IV-D agency shall activate an income withholding order if:

- (1) the obligor is delinquent as provided by section 2 of this chapter;
- (2) the obligor requests an immediate income withholding order;
- (3) the:
 - (A) custodial parent requests an immediate income withholding order;
 - (B) obligor is at least one (1) month in arrears; and
 - (C) Title IV-D agency determines that the request be approved;
- (4) section 24 of this chapter applies; or
- (5) a court has issued an income withholding order before the case becomes a case administered by a Title IV-D agency;

upon compliance with sections 7 and 10 of this chapter.

As added by P.L.1-1997, SEC.8.

IC 31-16-15-6

Activation of order by court

Sec. 6. The court shall activate an income withholding order if:

- (1) the obligor petitions the court to activate the income withholding order upon compliance with section 10 of this

chapter;

(2) subject to the requirements of sections 1 through 3, 8, and 10 of this chapter, the individual entitled to receive child support petitions the court to activate the income withholding order; or

(3) section 24 of this chapter applies.

As added by P.L.1-1997, SEC.8.

IC 31-16-15-7

Notice to obligor of activation of order or implementation of income withholding

Sec. 7. (a) Whenever an income withholding order is to be:

(1) activated in a case arising under section 5 of this chapter; or

(2) implemented by a Title IV-D agency under section 3 of this chapter despite the absence of a withholding order in the support order;

the Title IV-D agency shall send a written notice to the obligor.

(b) The notice required under subsection (a) must contain a statement of the following:

(1) Whether the obligor is delinquent in the payment of child support.

(2) The amount of child support, if any, that the obligor is in arrears.

(3) That a certain amount of income is to be:

(A) withheld under court order or action by the Title IV-D agency from the obligor's income; and

(B) forwarded to the clerk of the court.

(4) That the total amount to be withheld under court order or action by the Title IV-D agency by the obligor's income payor from the obligor's income is the sum of:

(A) the obligor's current monthly child support obligation;

(B) an amount to be applied toward the liquidation of any arrearages; and

(C) an optional fee of two dollars (\$2), which is payable to and imposed at the option of the income payor, each time the income payor forwards income to the clerk of the court or other person specified in the notice to the income payor under this chapter;

up to the maximum amount permitted under 15 U.S.C. 1673(b).

(5) That the provision for withholding applies to the receipt of any current or subsequent income.

(6) That the only basis for contesting activation of income withholding is a mistake of fact.

(7) That an obligor may contest the Title IV-D agency's determination to activate income withholding by making written application to the Title IV-D agency not later than twenty (20) days after the date the notice is mailed.

(8) That if the obligor contests the Title IV-D agency's determination to activate the income withholding order, the Title IV-D agency shall schedule an administrative hearing.

(9) That if the obligor does not contest the Title IV-D agency's determination to activate the income withholding order, the Title

IV-D agency will activate income withholding.
(10) That income withholding will continue until a court or the
Title IV-D agency terminates activation of income withholding.
As added by P.L.1-1997, SEC.8.

IC 31-16-15-8

Petition to activate order; hearing; summons; notice

Sec. 8. (a) If a petition to activate an income withholding order is filed under section 6(2) or 6(3) of this chapter, the court shall set a date for a hearing on the petition that is not later than twenty (20) days after the date the petition is filed. The court shall send a summons and a written notice to the obligor. The notice must contain a statement of the following:

- (1) Whether the obligor is delinquent in the payment of child support.
- (2) The amount of child support, if any, that the obligor is in arrears.
- (3) That a certain amount for the payment of current and past due child support is to be withheld each month from the obligor's income and forwarded to the clerk of the court.
- (4) That the total amount to be withheld each month by the obligor's income payor from the obligor's income is the sum of:
 - (A) the obligor's current monthly child support obligation;
 - (B) an amount to be applied toward the liquidation of any arrearages; and
 - (C) an optional fee of two dollars (\$2), which is payable to and imposed at the option of the income payor, each time the income payor forwards income to the clerk of the court;up to the maximum amount permitted under 15 U.S.C. 1673(b).
- (5) That the provision for withholding applies to receipt of any current or subsequent income.
- (6) That any of the following constitutes a basis for contesting the withholding:
 - (A) A mistake of fact.
 - (B) The parties have submitted a written agreement providing for an alternative child support arrangement.
 - (C) A court determines that good cause exists not to require immediate income withholding.
- (7) That income withholding will continue until the activation of the income withholding order is terminated by the court.
- (8) That if the obligor does not appear at the hearing, the court will activate the income withholding order.

(b) If:

- (1) the obligor does not appear at the hearing on the petition filed under section 6(2) or 6(3) of this chapter; or
- (2) the court grants the petition;

the court shall activate the income withholding order by mailing a written notice to the income payor as provided in section 10 of this chapter.

As added by P.L.1-1997, SEC.8.

IC 31-16-15-9

Obligor's petition to activate order

Sec. 9. If the obligor files a petition to activate an income withholding order under section 6(1) of this chapter, the court shall activate the income withholding order by mailing a written notice to the income payor as provided in section 10 of this chapter.

As added by P.L.1-1997, SEC.8.

IC 31-16-15-10

Notice to income payor of activation of order

Sec. 10. (a) To activate or implement an income withholding order, in addition to the notice requirements imposed by sections 7 and 8 of this chapter:

(1) the Title IV-D agency in a case arising under section 3 or 5 of this chapter; or

(2) the court in a case arising under section 6 of this chapter;

shall mail a written notice to each income payor not later than fifteen (15) calendar days after the issuance of the income withholding order.

(b) The notice to each income payor must contain a statement of the following:

(1) That the income payor is required to withhold a certain amount of income from the obligor.

(2) That the total amount to be withheld each month by the obligor's income payor from the obligor's income is the sum of:

(A) the obligor's current monthly child support obligation;

(B) an amount to be applied toward the liquidation of any arrearages; and

(C) an optional fee of two dollars (\$2), which is payable to and imposed at the option of the income payor, each time the income payor forwards income to the clerk of the court;

up to the maximum amount permitted under 15 U.S.C. 1673(b).

(3) That the income payor shall:

(A) forward the withheld income described in subdivision (2)(A) and (2)(B) to the clerk of the court or the state central collection unit named in the notice at the same time that the obligor is paid; and

(B) include a statement identifying:

(i) each cause number;

(ii) the Indiana support enforcement tracking system (ISETS) case number;

(iii) the name of each obligor; and

(iv) the name of each payee with the withheld income forwarded by the income payor.

(4) That withholding is binding upon the income payor until further notice.

(5) That the obligor may recover from the income payor in a civil action an amount not less than one hundred dollars (\$100) if the income payor:

(A) discharges the obligor from employment;

(B) refuses the obligor employment; or

(C) disciplines the obligor;

because the income payor is required to forward income under this chapter.

(6) That the income payor is liable for any amount that the income payor fails to forward under this chapter.

(7) That withholding under this chapter has priority over any secured or unsecured claim on income except claims for federal, state, and local taxes.

(8) That, if the income payor is required to withhold income from more than one (1) obligor, the income payor may:

(A) combine in a single payment the withheld amounts for all obligors who have been ordered to pay the same clerk or other governmental agency; and

(B) separately identify the part of the single payment that is attributable to each individual obligor.

(9) That if:

(A) there is more than one (1) order for withholding against a single obligor; and

(B) the obligor has insufficient disposable earnings to pay the amount required by all the orders;

the income payor shall distribute the withheld earnings pro rata among the entities entitled to receive earnings under the orders, giving priority to a current support withholding order, and shall honor all withholdings to the extent that the total amount withheld does not exceed the limits imposed under 15 U.S.C. 1673(b).

(10) That the income payor shall implement withholding not later than the first pay date after fourteen (14) days following the date the notice was received.

(11) That the income payor shall:

(A) notify:

(i) the Title IV-D agency in a case arising under section 5 of this chapter; or

(ii) the court in a case arising under section 1 or 6 of this chapter;

when the obligor terminates employment or ceases to receive other income not later than ten (10) days after termination; and

(B) provide:

(i) the obligor's last known address; and

(ii) the name and address of the obligor's new income payor if known.

As added by P.L.1-1997, SEC.8. Amended by P.L.138-2001, SEC.12.

IC 31-16-15-11

Contest of activation of order by Title IV-D agency

Sec. 11. (a) An obligor may contest the Title IV-D agency's determination to implement or activate income withholding under section 3 or 5 of this chapter by making a written application to the Title IV-D agency not later than twenty (20) days after the date that notice is mailed to the obligor.

(b) The only basis for contesting the activation or implementation of income withholding under this section is a mistake of fact.

(c) If the obligor does not take timely action under subsection (a),

the Title IV-D agency shall send the income withholding order to the income payor not later than fifteen (15) calendar days after:

- (1) the end of the contest period; or
- (2) determining the income payor's address if not known at the end of the contest period.

(d) The Title IV-D agency shall:

- (1) hold, not later than twenty-five (25) days after written application is made under subsection (a), a hearing to review the agency's determination to activate income withholding; and
- (2) make a determination on the activation of income withholding at the hearing.

(e) If the Title IV-D agency decides to activate income withholding, the Title IV-D agency shall mail a written notice to each income payor as provided in section 10 of this chapter.

As added by P.L.1-1997, SEC.8.

IC 31-16-15-12

Contest of activation of order by court

Sec. 12. (a) An obligor may contest the activation of an income withholding order under section 6(2) or 6(3) of this chapter by appearing at the hearing provided by section 8(b) of this chapter.

(b) The only basis for contesting the activation of an income withholding order under this section is a mistake of fact.

(c) If the court decides to activate the income withholding order, a written notice shall be mailed to the income payor as provided in section 10 of this chapter.

As added by P.L.1-1997, SEC.8.

IC 31-16-15-13

Time activation of income withholding takes effect

Sec. 13. In a case arising under section 3, 5, 6(2), or 6(3) of this chapter, activation of income withholding takes effect:

- (1) not earlier than twenty (20) days after the date written notice is sent to the obligor under section 7 or 8 of this chapter; and
- (2) upon the mailing of written notice to the income payor under section 10 of this chapter;

unless the court or the Title IV-D agency determines, at a hearing held under section 11 or 12 of this chapter, that income withholding may not be activated under this chapter.

As added by P.L.1-1997, SEC.8.

IC 31-16-15-14

Time income withholding activated by obligor's petition takes effect

Sec. 14. In a case arising under section 6(1) of this chapter, activation of income withholding takes effect upon the mailing of written notice to the income payor under section 10 of this chapter.

As added by P.L.1-1997, SEC.8.

IC 31-16-15-15

Withholding of income by income payor; payment to clerk

Sec. 15. (a) An income payor that is required to withhold income under this chapter shall:

- (1) forward income withheld for the payment of current and past due child support to the clerk of the court, the state central collection unit, or other person named in the notice at the same time that the obligor is paid;
- (2) include a statement identifying:
 - (A) each cause number;
 - (B) the Indiana support enforcement tracking system (ISETS) case number;
 - (C) the name of each obligor; and
 - (D) the name of each payee with the withheld income forwarded by the income payor; and
- (3) implement withholding not later than the first pay date after fourteen (14) days following the date the notice was received.

(b) The income payor may retain, in addition to the amount required to be forwarded to the clerk of court under subsection (a), a fee of two dollars (\$2) from the obligor's income each time the income payor forwards income to the clerk of the court or other person specified in the notice to an income payor under this chapter. If the income payor elects to withhold the fee, the amount to be withheld for the payment of current and past due child support must be reduced accordingly if necessary to avoid exceeding the maximum amount permitted to be withheld under 15 U.S.C. 1673(b).

As added by P.L.1-1997, SEC.8. Amended by P.L.138-2001, SEC.13.

IC 31-16-15-16

Combination of withheld amounts for multiple obligors in single payment; multiple withholdings paid electronically

Sec. 16. (a) Except as provided in subsection (b), if the income payor is required to withhold income from more than one (1) obligor under this chapter, the income payor may:

- (1) combine in a single payment the withheld amounts for all obligors who have been ordered to pay to the same clerk or other governmental agency; and
- (2) separately identify the part of the single payment that is attributable to each individual obligor.

(b) If the income payor:

- (1) is required to withhold income from more than one (1) obligor under this chapter; and
- (2) employs more than fifty (50) employees;

the income payor shall make payments to the state central collection unit through electronic funds transfer.

As added by P.L.1-1997, SEC.8. Amended by P.L.86-2002, SEC.13.

IC 31-16-15-17

Multiple withholding orders against single obligor; pro rata distribution of withheld earnings

Sec. 17. If:

- (1) there is more than one (1) order for withholding against a

single obligor under this chapter; and
(2) the obligor has insufficient disposable earnings to pay the amount required by all the orders;
the income payor shall distribute the withheld earnings pro rata among the entities entitled to receive earnings under the orders and shall honor all withholdings to the extent that the total amount withheld does not exceed the limits imposed under 15 U.S.C. 1673(b).
As added by P.L.1-1997, SEC.8.

IC 31-16-15-18

Notice by income payor following cessation of employment or income

Sec. 18. The income payor shall:

(1) notify:

(A) the Title IV-D agency in a case arising under section 3 or 5 of this chapter; or

(B) the court in a case arising under section 1 or 6 of this chapter;

when the obligor ceases to receive income not later than ten (10) days after the employment or income ceases; and

(2) provide:

(A) the obligor's last known address; and

(B) the name and address of the obligor's new income payor if known.

As added by P.L.1-1997, SEC.8.

IC 31-16-15-19

Severance pay, accumulated sick pay, vacation pay, accumulated commissions, bonuses, or other lump sum payments; withholding of support arrearages

Sec. 19. (a) If an obligor:

(1) is entitled to net income in the form of:

(A) severance pay;

(B) accumulated sick pay;

(C) vacation pay;

(D) accumulated commissions;

(E) a bonus payment; or

(F) other lump sum payment; and

(2) owes an amount of child support that is in arrears;

the income payor shall withhold the amount in arrears or the product computed under subsection (b), whichever is less, up to the maximum permitted under 15 U.S.C. 1673(b).

(b) The income payor shall multiply:

(1) the amount of support the obligor is required to pay each week; by

(2) the number of weeks represented by the lump sum payment.

As added by P.L.1-1997, SEC.8.

IC 31-16-15-20

Payments by clerk to persons entitled to receive child support

Sec. 20. The clerk of the court shall:

- (1) pay the income forwarded by the income payor to the person entitled to receive child support payments; and
- (2) maintain records to monitor and document the receipt and payment of income under this chapter.

As added by P.L.1-1997, SEC.8.

IC 31-16-15-21

Modification of order

Sec. 21. The court may modify an income withholding order under section 1 of this chapter whenever the court enforces an order of support under IC 31-14 or IC 31-16-2 through IC 31-16-12.

As added by P.L.1-1997, SEC.8.

IC 31-16-15-22

Termination of income withholding

Sec. 22. (a) An income withholding order under section 1 of this chapter (or IC 31-2-10-7 before its repeal) terminates when both of the following occur:

- (1) The duty to support a child ceases under IC 31-14 or IC 31-16-2 through IC 31-16-12.
- (2) No child support arrearage exists.

(b) Activation of income withholding terminates when the whereabouts of the child and the child's custodial parent are unknown, preventing the forwarding of child support payments.

As added by P.L.1-1997, SEC.8.

IC 31-16-15-23

Liability of income payors

Sec. 23. If an income payor fails to forward the money required by an income withholding order as set forth in the notice described in section 10 of this chapter, the income payor is liable for the amount the income payor fails to forward.

As added by P.L.1-1997, SEC.8.

IC 31-16-15-24

Factors for activation of income withholding order

Sec. 24. An income withholding order may be activated under section 5(4) or 6(3) of this chapter if:

- (1) a person who has been ordered to pay child support is delinquent;
- (2) the income withholding order cannot be activated under section 5 or 6 of this chapter; and
- (3) the duty to support a child has ceased under IC 31-14 or 31-16-2 through IC 31-16-12.

As added by P.L.1-1997, SEC.8.

IC 31-16-15-25

Actions by obligors for employment discharge, refusal, or discipline

Sec. 25. (a) If an obligor is:

- (1) discharged from employment;
- (2) refused employment; or
- (3) disciplined;

because the income payor is required to withhold income of the obligor under this chapter, the obligor is entitled to recover an amount of not less than one hundred dollars (\$100).

(b) The obligor may collect the money described in subsection (a) by filing a civil action against the income payor in a circuit or superior court.

(c) The collection of money under this section does not affect:

- (1) the obligor's right to damages under IC 24-4.5-5-202; or
- (2) any other legal remedy available to the obligor;

because of discharge from employment, refusal of employment, or disciplinary action.

As added by P.L.1-1997, SEC.8.

IC 31-16-15-26

New income payors; notice

Sec. 26. (a) If the Title IV-D agency or the court becomes aware that the obligor has a new income payor after income withholding has been activated under section 5 or 6 of this chapter:

- (1) the Title IV-D agency in a case arising under section 5 of this chapter; or
- (2) the court in a case arising under section 6 of this chapter;

shall send a notice to the new income payor that the withholding is binding on the new income payor.

(b) The notice sent under subsection (a) must comply with section 10 of this chapter.

As added by P.L.1-1997, SEC.8.

IC 31-16-15-27

Priority of order over other claims

Sec. 27. An income withholding order under this chapter has priority over any secured or unsecured claim on income except claims for federal, state, and local taxes that are required to be withheld for the calendar year in which the income is subject to a withholding order.

As added by P.L.1-1997, SEC.8.

IC 31-16-15-28

Full faith and credit

Sec. 28. The courts and the Title IV-D agency shall give full faith and credit to income withholding orders that are issued in other states.

As added by P.L.1-1997, SEC.8.